

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIWAN SHAW,

Defendant-Appellant.

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UNPUBLISHED

October 24, 2006

No. 263891

Wayne Circuit Court

LC No. 05-001699-01

Before: Cavanagh, P.J., and Bandstra and Owens, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of assault with intent to do great bodily harm less than murder, MCL 750.84, discharge of a firearm at a building, MCL 750.234b, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced, as a third-offense habitual offender, MCL 769.11, to 8 to 20 years in prison for the assault with intent to do great bodily harm conviction, two to eight years in prison for the discharge of a firearm at a building conviction, three to ten years in prison for the felon in possession of a firearm conviction, and two years in prison for the felony-firearm conviction. Defendant appeals as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the prosecution failed to present sufficient evidence to establish defendant's guilt beyond a reasonable doubt. We review de novo a sufficiency of the evidence claim to determine whether a rational factfinder could have concluded that the prosecution proved all elements of the crime beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). Direct and circumstantial evidence is viewed in the light most favorable to the prosecution. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). "It is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences." *Id.*

The elements of assault with intent to do great bodily harm are: (1) an attempt or threat with force or violence to do corporal harm to another (an assault), and (2) an intent to do great bodily harm less than murder. *People v Brown*, 267 Mich App 141, 147; 703 NW2d 230 (2005); MCL 750.84. There is sufficient evidence from which a rational factfinder could conclude that defendant shot at the house in question and intended to do great bodily harm to at least one of its occupants.

April Easterling, defendant's girlfriend, went to Calvin Byrd's residence because she claimed Byrd shot at her and her children earlier that day. Easterling had called defendant and two other men to tell them about the earlier shooting and that she was going over to Byrd's house. Easterling and a friend arrived at the house, and Easterling knocked on the door. Byrd's brother, Reginald White, answered the door and told her Byrd was not home and that she was lying about the shooting. White closed the door on Easterling, and she and her friend left. As they were leaving the premises, Easterling saw in her rearview mirror a brown Chevy pull up to the house. Within seconds, Easterling heard four or five gunshots, but she was around the corner by then. Easterling did not see who was in the car, but she told an officer it could have been "Pete, Duquan, Anton, Dishawn, maybe all of them." Easterling testified that defendant also goes by the nickname "Pete."

Reginald White testified that defendant pulled up in front of the house, got out of the car with a black handgun, and cocked the gun. White closed the door when he saw defendant cock the gun, grabbed his nephew and ran upstairs. White estimated that less than ten seconds later, more than ten shots were fired. White testified that the front door was riddled with bullets, there were two bullet holes in the front window, a bullet in the wall of the hallway that would have been just above White's waist, and a bullet in the kitchen above the sink. White testified that he knew defendant as "Pete" from the neighborhood. In addition, a police officer testified that there were more than ten bullet holes in the front door, two bullet holes in the living room window, and shell casings in the street. White gave the name "Pete" to the police as a suspect. White went to the police station to make a statement and selected a photograph of defendant out of approximately 30 photographs, referring to defendant as "Pistol Pete."

Viewing the direct and circumstantial evidence in the light most favorable to the prosecution, it was reasonable for the trial judge to conclude that defendant had a handgun, that he fired the gun at the house, and that he had the intent to do great bodily harm. As noted above, it is for the trier of fact to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences. *Hardiman, supra* at 428. Therefore, although none of the witnesses actually saw defendant shoot the gun, it was reasonable for the trial judge to conclude that, after defendant cocked the gun, the shots that were fired only seconds later came from his gun and that, by the number of shots and location of the bullets, defendant had the intent to do great bodily harm.

Consequently, there was sufficient evidence to convict defendant of discharge of a firearm at a building. This offense encompasses "an individual who intentionally discharges a firearm at a facility that he or she knows or has reason to believe is a dwelling or an occupied structure." *People v Wilson*, 230 Mich App 590, 592; 585 NW2d 24 (1998); MCL 750.234b(1). At the time of the shooting, there were seven people in the house, including four or five children. Defendant knew or had reason to believe the house was occupied because White was still at the door, with it open, at the time defendant pulled up, got out of the car with a black handgun, and cocked the gun.

A person convicted of a felony "shall not possess, use, transport, sell, purchase, carry, ship, receive, or distribute" a firearm in Michigan until three years after he has paid all fines for the violation, served all prison terms for the violation, and completed all conditions of probation or parole for the violation. *People v Dillard*, 246 Mich App 163, 169; 631 NW2d 755 (2001); MCL 750.224f. If the defendant was convicted of a "specified felony," the period of time is five

years. *People v Parker*, 230 Mich App 677, 684-685; 584 NW2d 753 (1998); MCL 750.224f(2). We have already concluded that there was sufficient evidence to conclude that defendant possessed a handgun during the incident. Both parties stipulated that, for the purpose of the felon in possession of a firearm charge, defendant had been convicted of a specified felony and did not have the right to possess a firearm. Therefore, the evidence was sufficient to convict defendant of this offense.

Finally, felony-firearm is an offense covering a “person who carries or has in his or her possession a firearm when he or she commits or attempts to commit a felony.” *People v Guiles*, 199 Mich App 54, 58; 500 NW2d 757 (1993); MCL 750.227b. Because there was sufficient evidence to find defendant guilty of assault with intent to do great bodily harm and discharging a firearm at a dwelling or occupied structure, these offenses could serve as the underlying felony for the felony-firearm conviction. *Wilson, supra* at 593.

The evidence presented at trial was sufficient to convict defendant of assault with intent to do great bodily harm less than murder, discharge of a firearm at a building, felon in possession of a firearm, and felony-firearm.

We affirm.

/s/ Mark J. Cavanagh  
/s/ Richard A. Bandstra  
/s/ Donald S. Owens